CHAPTER NO. 144

SENATE BILL NO. 1712

By Womack

Substituted for: House Bill No. 1720

By Rhinehart, Buck

AN ACT To enact the Tennessee Creditor-Placed Insurance Act of 1999.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The purposes of this act are to:

(a) Promote the public welfare by regulating creditor-placed insurance;

(b) Create a legal framework within which creditor-placed insurance may be written in this state;

(c) Help maintain the separation between creditors and insurers; and

(d) Minimize the possibilities of unfair competitive practices in the sale of creditor-placed insurance.

SECTION 2. (a) This act applies to an insurer or agent transacting creditor-placed insurance as defined in this act.

(b) All creditor-placed insurance written in connection with credit transactions for personal, family or household purposes is subject to the provisions of this act, except:

(1) Transactions involving extensions of credit primarily for business or commercial purposes;

(2) Insurance on collateralized real property;

(3) Insurance offered by the creditor and elected by the debtor at the debtor's option;

(4) Insurance for which no specific charge is made to the debtor or the debtor's account; or

(5) Blanket insurance, whether paid for by the debtor or the creditor.

(c) Nothing in this act shall be construed to create or imply a private cause of action for violation of this act, and the commissioner shall have authority to bring administrative or judicial proceedings to enforce this act.

SECTION 3. As used in this act, unless the context otherwise requires:

(a) "Actual cash value (ACV)" means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.

(b) "Blanket insurance" means insurance that provides coverage on collateral as defined in a policy issued to a creditor, without specifically listing the collateral covered.

(c) "Collateral" means personal property that is pledged as security for the satisfaction of a debt.

(d) "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.

(e) "Credit transaction" means a transaction by the terms of which the repayment of money loaned or credit commitment made, or payment of goods, services or properties sold or leased, is to be made at a future date or dates.

(f) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges for which payment is arranged through a credit transaction, or any successor to the right, title or interest of a lender, vendor or lessor.

(g) "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense or damage to collateralized personal property as a result of fire, theft, collision or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by limited dual interest insurance. It is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required physical damage insurance, with the cost of the coverage being charged to the debtor. It shall be either single interest insurance or limited dual interest insurance.

(h) "Debtor" means the borrower of money or a purchaser or lessee of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction.

(i) "Insurance tracking" means monitoring evidence of insurance on collateralized credit transactions to determine whether insurance required by the credit agreement has lapsed, and communicating with debtors concerning the status of insurance coverage.

(j) "Insurer" means an insurance company, association or exchange authorized to issue insurance policies in the State of Tennessee.

(k) "Lapse" means that the insurance coverage required by the credit agreement is not in force.

(l) "Limited dual interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing the debtor's credit transaction. This insurance waives the three (3) conditions for loss payment under single interest insurance and extends coverage on the collateral while in the possession of the debtor.

(m) "Loss ratio" means the ratio of incurred losses to earned premium.

(n) "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned charges.

(o) "Agent" means a person who receives a commission for insurance placed or written or who, on behalf of an insurer or creditor, solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance to which this act applies, except a regular salaried officer, employee or other representative of an insurer who devotes substantially all working time to activities other than those specified here and who receives no compensation that is directly dependent on the amount of insurance business written, and except a regular salaried officer or employee of a creditor who receives no compensation that is directly dependent on the amount of insurance effected or procured.

(p) "Single interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing a debtor's credit transaction. Three (3) conditions must be met for payment of loss under the policy:

(1) The debtor has defaulted in payment;

(2) The creditor has legally repossessed the collateral, unless collateral has been stolen from the debtor; and

(3) The creditor has suffered an impairment of interest.

(q) "Commissioner" means the Commissioner of Commerce and Insurance;

SECTION 4. (a) Creditor-placed insurance shall become effective on the latest of the following dates:

(1) The date of the credit transaction;

(2) The date prior coverage, including prior creditor-placed insurance coverage lapsed;

(3) One (1) year before the date on which the related insurance charge is made to the debtor's account; or

(4) A later date provided for in the agreement between the creditor and insurer.

(b) Creditor-placed insurance shall terminate on the earliest of the following dates:

(1) The date other acceptable insurance becomes effective, subject to the debtor providing acceptable evidence of the other insurance to the creditor;

(2) The date the collateralized personal property is repossessed, unless the property is returned to the debtor within ten (10) days of the repossession;

(3) The date the collateralized personal property is determined by the insurer to be a total loss;

(4) The date the debt is completely extinguished; or

(5) An earlier date specified in the individual policy or certificate of insurance.

(c) An insurance charge shall not be made to a debtor for a term longer than the scheduled term of the creditor-placed insurance when it becomes effective, nor may an insurance charge be made to the debtor for creditor-placed insurance before the effective date of the insurance.

(d) If a charge is made to a debtor for creditor-placed insurance coverage that exceeds a term of one year, the debtor shall be notified at least annually that the insurance will be canceled and a refund or credit of unearned charges made if evidence of acceptable insurance secured by the debtor is provided.

SECTION 5. (a) Premiums for creditor-placed insurance coverage may be calculated based on:

(1) An amount not exceeding the net debt even though the coverage may limit the insurer's liability to the net debt, actual cash value or cost of repair; or

(2) Other premium calculation methods that more closely reflect the exposure of each item insured and approximate the premium calculation method of the coverage required by the credit agreement.

(b) An insurer shall not write creditor-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the commissioner. The premium or amount charged to the debtor for creditor-placed insurance shall not exceed the premiums charged by the insurer, computed at the time the charge to the debtor is determined.

(c) A method of billing insurance charges to the debtor on closed-end credit transactions that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date is prohibited, unless specifically disclosed at the time of the origination of the credit agreement and specifically agreed to by the debtor at the time the charge is added to the outstanding credit balance.

SECTION 6. (a) Creditor-placed insurance coverage shall not include:

(1) Coverage for the cost of repossession;

(2) Skip, confiscation and conversion coverage;

(3) Coverage for payment of mechanics' or other liens that do not arise from a covered loss occurrence;

(4) Coverage that requires a debtor's insurance deductible to be less than two hundred dollars ($200); or

(5) Coverage that is broader than the insurance coverages that meet the minimum insurance requirements of the credit agreement.

(b) Nothing in this section shall be deemed to prohibit the issuance of a separate policy or endorsement providing the coverages listed in subsection (a) of this section. However, no charge shall be passed along to the debtor for the coverages.

SECTION 7. Creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

SECTION 8. (a) All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Commissioner of Commerce and Insurance.

(b) The commissioner shall within thirty (30) days after the filing of the policy forms and certificates of insurance disapprove a form that does not conform to this act or to other applicable provisions of the insurance statutes and regulations and shall, within thirty (30) days of filing, disapprove a schedule of premium rates pertaining to the form if it does not conform to the standard set forth in subsection (e).

(c) If the commissioner disapproves a form or schedule of premium rates in accordance with subsection (b), the commissioner shall promptly notify the insurer in writing of the disapproval, and it shall be unlawful for the insurer to issue or use the form or schedule. In the notice, the commissioner shall specify the reasons for disapproval and state that a hearing will be granted upon request pursuant to Tennessee Code Annotated, Title 4, Chapter 5.

(d) Unless the commissioner disapproves the form or schedule of premium rates in accordance with subsections (b) and (c) or gives written approval of the form or schedule within thirty (30) days after the filing, the form or schedule shall be deemed approved on the thirty-first (31st) day after the filing.

(e) The schedules of premium rates shall not be excessive, inadequate or unfairly discriminatory. In determining whether a schedule of premium rates are excessive, inadequate or unfairly discriminatory, the commissioner shall take into account past and prospective loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation and other acquisition costs including insurance tracking costs, reserves, taxes, licenses, fees and assessments, reasonable insurer profit and other relevant data. Rates are not unfairly discriminatory because different premiums result for different policyholders, including group policyholders, with similar loss exposures but different expense factors or similar expense factors but different loss exposures, nor are rates unfairly discriminatory if they are averaged broadly among all persons insured in this state or all persons insured under a group insurance policy.

(f) The commissioner may withdraw approval of an approved form or schedule of premium rates when the commissioner would be required to disapprove the form or schedule of premium rates if it were filed at the time of the withdrawal. The withdrawal shall be in writing and shall specify the reasons for withdrawal and the effective date of the withdrawal. An insurer adversely affected by a withdrawal may, within thirty (30) days after receiving the written notification of the withdrawal, request a hearing pursuant to Tennessee Code Annotated, Title 4, Chapter 5, to determine whether the withdrawal should be annulled, modified or confirmed. Unless the commissioner grants an extension in writing in the withdrawal or subsequently grants an extension, the withdrawal shall, in the absence of a request for hearing, become effective, prospectively and not retroactively, on the ninety-first (91st) day following delivery of the notice of withdrawal and, if the request for hearing is filed, on the ninety-first (91st) day following delivery of written notice of the commissioner's determination.

(g) Forms and rates filed and approved in accordance with this section shall be deemed to be in compliance in all respects with the laws of this state.

SECTION 9. (a) Within sixty (60) calendar days after the termination of creditor-placed insurance coverage, and in accordance with the formulas approved by the commissioner, an insurer shall refund any unearned premium or other identifiable charges.

(b) Within sixty (60) calendar days after the termination date of creditor-placed insurance coverage, the insurer shall provide to the debtor a statement of refund disclosing the effective date, the termination date, the amount of premium being refunded and the amount of premium charged for the coverage provided. No statement shall be required in the event that the policy terminates pursuant to subsection (b)(4) of Section 4.

(c) The entire amount of premiums, minimum premiums, fees or charges of any kind shall be refunded if no coverage was provided.

SECTION 10. (a) In the event of a loss under the creditor-placed insurance policy, the insurer shall pay, at a minimum, the least of the following, the value of which shall be determined as of the date of loss:

(1) The cost to repair the collateral less any applicable deductible;

(2) The actual cash value of the collateral less any applicable deductible;

(3) The net debt, less any applicable deductible. The method of calculation of net debt payable pursuant to this paragraph shall be identical to the method of calculation of net debt for payment of premiums pursuant to subsection (a) of Section 5 of this act; or

(4) If single interest insurance is provided, the amount by which the creditor's interest is impaired.

(b) The net debt or actual cash value amounts in subsection (a) may be reduced by the value of salvage if the insurer does not take possession of the insured property.

(c) In the event of a loss, no subrogation shall run against the debtor from the insurer.

(d) Whenever a claim is made on a creditor-placed insurance policy, the insurer shall furnish to the claimant a written statement of the loss explaining the settlement amount and the method of settlement.

(e) A creditor or insurer may not abandon salvage to a towing or storage facility in lieu of payment of storage fees without the consent of the facility and the claimant. The insurer shall be responsible for the payment of towing and storage charges for a covered loss occurrence from the time the claim is reported to the insurer in accordance with the terms of the policy to the time the claim is paid. The insurer shall give written notice to the claimant when the claim is paid that the claimant may incur storage charges after the date the claim is paid.

SECTION 11. (a) In order for the creditor to place insurance on the collateral pledged by the debtor and pass the cost of the insurance on to the debtor:

(1) The creditor must have a security interest in the personal property;

(2) The credit agreement must require the debtor to maintain insurance on the collateral to protect the creditor's interest;

(3) The credit agreement must authorize the creditor to place the insurance if the debtor fails to provide evidence of the insurance; and

(4) These requirements must be clearly disclosed to the debtor at the inception of the credit transaction.

(b) The debtor shall always have the right to provide required insurance through existing policies of insurance owned or controlled by the debtor or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within this state. However, a creditor may establish maximum acceptable deductibles, insurer solidity standards and other reasonable conditions with respect to the required insurance.

SECTION 12. (a) The entire amount of the premium due from a creditor shall be remitted to the insurer or its agent in accordance with the insurer's requirements. No commissions may be paid to, or retained by, a person or entity except a licensed and appointed insurance agent.

(b) The retention by the creditor of unearned premiums upon cancellation of the insurance without crediting to the debtor's account the amount of unearned insurance charges is prohibited.

(c) Rebates to the creditor of a portion of the premium charged to the debtor are prohibited as are other inducements provided to the creditor by an insurer or agent. The listing of the following activities as prohibited rebates or inducements is not intended to be restrictive, and the commissioner may identify an activity as prohibited by rule, regulation or order:

(1) Allowing insurers or agents to purchase certificates of deposit from the creditor or to maintain accounts with the creditor at less than the market interest rates and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration;

(2) Paying a commission to a person, including a creditor, who is not appropriately licensed as an agent in this state; and

(3) Purchasing or offering to purchase certificates of deposit from or maintaining or offering to maintain deposit accounts or investment accounts with a creditor as part of a creditor-placed insurance solicitation.

(d) Prohibited rebates or inducements do not include:

(1) The providing of insurance tracking and other services incidental to the creditor-placed insurance program;

(2) The paying of commissions and other compensation to a duly licensed and appointed insurance agent, whether or not affiliated with the creditor;

(3) The paying to the creditor policyholder of group experience rated refunds or policy dividends; and

(4) The paying to the creditor of amounts intended to reimburse the creditor for its expenses incurred incidental to the creditor-placed insurance program (such as costs of data processing, mail processing, telephone service, insurance tracking, billing, collections and related activities); provided that these payments are calculated in a manner that does not exceed an amount reasonably estimated to equal the expenses incurred by the creditor.

(e) An insurer that pays commissions to creditor-related agents for creditor-placed insurance that are greater than twenty percent (20%) of the net written premium shall be required to demonstrate the commissions are not unreasonably high in relation to the value of the services rendered.

(f) Nothing contained in this section shall prohibit or restrict an insurer or agent from maintaining a demand, premium deposit or other account or accounts with a creditor for which the insurer or agent provides insurance if the accounts pay the market interest rate and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration.

SECTION 13. (a) A creditor shall not impose charges, including premium costs and related interest and finance charges, on a debtor for creditor-placed insurance coverage unless adequate disclosure of the requirement to maintain insurance has been made to the debtor. Adequate disclosure is accomplished if the following occurs:

(1) The credit agreement sets forth the requirement that the debtor must maintain insurance on the collateral as provided for in Section 11;

(2) The creditor makes reasonable efforts to notify the debtor of the requirement to maintain insurance and allows a reasonable time for compliance with this requirement;

(3) A final notice as required by this act is sent to the debtor; and

(4) If creditor-placed insurance coverage is issued, a copy of the policy or certificate is sent to the debtor as provided for in Section 7.

(b) After adequate disclosure of the request to maintain insurance has been made to the debtor as required by this section, a creditor may proceed to impose charges for creditor-placed insurance if the debtor fails to provide evidence of insurance. A creditor may impose charges no earlier than ten (10) calendar days after sending the final notice.

(c) Reasonable efforts to notify the debtor are accomplished if:

(1) The creditor mails a notice by first-class mail to the debtor's last known address as contained in the creditor's records, stating that the creditor intends to charge the debtor for creditor-placed insurance coverage on the collateral if the debtor fails to provide evidence of the property insurance to the creditor;

(2) The creditor allows the debtor at least twenty (20) calendar days to respond to the notice and provide evidence of acceptable insurance coverage before sending a final notice; and

(3) The creditor sends a final notice in compliance with this section by first-class mail to the debtor's last known address as contained in the creditor's records at least ten (10) calendar days before the cost of insurance is charged to the debtor by the creditor. Proof of the mailing of the final notice shall be retained for at least three (3) years following the expiration or termination of the coverage or as otherwise required by law.

(d) The initial notice shall be in a form determined by the creditor to remind the debtor of the requirement to maintain insurance on the collateral. The final notice shall be as complete as the following notice, printed in not less than twelve (12) point type, and modified where necessary to fit the nature of the credit transaction:

FINAL NOTICE

Your credit agreement with us requires you to have property insurance on the collateral until you pay off your loan. You have not given us proof you have insurance on the property. You can ask your insurance company or agent to give us proof of insurance or you can send us proof you have property insurance within ten (10) calendar days after the date this letter was postmarked. If you do not, we will buy the insurance and charge the cost to you.

You must pay for the property insurance we buy. It may cost more than insurance you can buy on your own. The cost of the insurance we buy may be added to your loan balance and we may charge you interest on it. If we do, you will pay interest at the same rate you pay on your loan.

The insurance we buy will pay claims to us (the creditor) for physical damage to your property. It will not pay any claims made against you (and it may not pay you for any claims you make [delete if limited dual interest coverage]). The insurance we buy will not give you any liability insurance coverage and will not meet the requirements of a state's financial responsibility law.

We may receive compensation for placing this insurance, which is included in the cost of coverage charged to you.

The property coverage we buy will start on the date shown in the policy or certificate, which may go back to the date of the loan or the date your prior coverage stopped. We will cancel the insurance we bought for you and give you a refund or credit of unearned charges if you give us proof you have bought property insurance somewhere else or if you have paid off the loan.

(e) All creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. Not earlier than the sending of the final notice nor fifteen (15) days after a charge is made to the debtor for creditor-placed insurance coverage, the creditor shall cause a copy of the individual policy, certificate or other evidence of insurance coverage evidencing the creditor-placed insurance coverage to be sent, first-class mail, to the debtor's last known address.

(f) A creditor's compliance with or failure to comply with this act shall not be construed to require the creditor to purchase insurance coverage on the collateral, and the creditor shall not be liable to the debtor or a third party as a result of its failure to purchase the insurance.

SECTION 14. (a) The commissioner may conduct investigations and/or examinations of insurers and agents to ensure compliance with an enforcement of the provisions of the act or any rule, regulation or order hereunder. Such examination or investigation shall be conducted and subject to the provision of § 56-1-411 and Title 56, Chapter 8, Part 1.

(b) The commissioner may by order, deny, suspend or revoke an insurer's certificate of authority or an agent's license if the commissioner finds that such insurer or agent has violated any provision of the act. Every hearing or other proceeding, except examinations or investigations conducted pursuant to this part, held under the provisions of this act which determines or affects the legal rights, duties, or privileges of an insurer or an agent shall be deemed to be a "contested case" under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, and shall be conducted as required by that act, unless otherwise noted.

(c) If the commissioner has reason to believe that any person or entity is engaging in any activity that would be a violation of this part or any rule promulgated under this part, the commissioner may issue an order directing that person or entity to cease and desist from committing the violations, impose a civil penalty for the violations, provide an equitable remedy for past violations, or any combination of these. Such order may be issued without prior notice if the commissioner makes a finding that such order is necessary for the protection of policyholders and that the public health, safety, and welfare require the order to be issued without prior notice to affected parties. At any hearing or other proceeding conducted as a result of an order to cease and desist, pursuant to this part, the person or entity subject to the order shall be required to show cause why such order should be annulled, modified or confirmed.

(d) Whenever it appears to the commissioner that any person or entity has engaged or is about to engage in an act of practice constituting a violation of any provision of this act or any rule, regulation or order hereunder, the commissioner may, in the commissioner's discretion, bring an action in chancery court of any county in this state to enjoin the acts or practices and to enforce compliance with this act or any rule, regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement, or other proper equitable relief shall be granted.

(e) Additionally, upon a finding that any person or entity has violated a provision of this act, the commissioner may impose a civil penalty of not more than one thousand dollars ($1,000) for each violation not to exceed in the aggregate one hundred thousand dollars ($100,000), unless the violation was committed flagrantly in conscious disregard of the act, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed in the aggregate two hundred fifty thousand dollars ($250,000).

(f) Any person aggrieved by a final order of the commissioner under the act may obtain judicial review of the order in the chancery court of Davidson County by proceedings in accordance with the Uniform Procedures Act, compiled in Title 4, Chapter 5.

SECTION 15. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect on October 2, 1999, the public welfare requiring it.

PASSED: May 3, 1999

JOHN S. WILDER
SPEAKER OF THE SENATE

JIMMY NAIFEH, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 12th day of May 1999

DON SUNDQUIST, GOVERNOR